

**MF 03-7**

**Tax Type: Motor Fuel Use Tax**

**Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	No. 03 ST 0000
<b>OF THE STATE OF ILLINOIS</b>	)	FEIN: 00-0000000
	)	Motor Fuel Tax
v.	)	Claim For Credit
	)	
<b>ABC COAL,</b>	)	Mimi Brin
Taxpayer	)	Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Gary Stutland, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

**Synopsis:**

This matter comes on for hearing pursuant to ABC Coal's ("ABC" or the "taxpayer") protest of the Illinois Department of Revenue's ("Department") denial of its claim for refund of Illinois Motor Fuel Tax, filed for the period of 11/02, in the amount of \$3,000. The filed claim is based upon taxpayer's purchase of dyed diesel fuel, for which, it avers, it incorrectly paid motor fuel tax to its supplier. Messrs. John and Jim Doe, President and Vice-President, respectively, of taxpayer, appeared on its behalf and offered documentary and oral evidence. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the

Department. In support of this recommendation, I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the letter from the Department to the taxpayer wherein taxpayer's claim for refund of Illinois Motor Fuel Tax for the period covering 11/02 in the amount of \$3,000, was denied; Department Ex. No. 1<sup>1</sup>
2. As a result of civil litigation, taxpayer paid XYZ Fuels ("XYZ"), its fuel supplier, \$3,000 on November 6, 2002. Taxpayer Ex. No. 6

**Conclusions of Law:**

The statutory provisions governing the payment of motor fuel tax are found in the Motor Fuel Tax Law at 35 ILCS 505/1 *et seq.* (the "Law") Any claims for refund of taxes paid for fuel purchased pursuant to §13 this Law, *id.* at 505/13. It is a basic premise in Illinois tax law that any right to a refund or credit can arise only from acts of the legislature. Jones v. Department of Revenue, 60 Ill. App.3d 886, 889 (1<sup>st</sup> Dist. 1978)

The facts presented in this case are confusing. Taxpayer, through its President and Vice-President, provided that the dyed fuel at issue was purchased from XYZ in the 1990's. Transcript, *passim* The testimony of record is that, based upon a Department administrative hearing decision, 98 ST 0017, the Department determined that taxpayer

was not liable for motor fuel tax on this fuel. Id. However, taxpayer offers that XYZ, as its supplier, was required by the Department, to pay tax on taxpayer's fuel purchase, and did so in 1997, 1998. Id. Taxpayer and XYZ then became adversaries in a civil action in the Circuit Court of Cook County<sup>2</sup> that resulted in taxpayer paying XYZ \$3,000 in November 2002, which, taxpayer avers, is for the taxes XYZ was required to pay to the Department for the fuel at issue. Id.

The first fatal flaw in this matter is that taxpayer cannot link through competent evidence, its \$3,000 payment to XYZ to the fuel at issue-that is to fuel it says it purchased sometime in the 1990's. Absent such evidence, there is simply no way to determine the legitimacy of the claim. While the evidence of record shows that taxpayer paid XYZ \$3,000 in 2002, there is no legally admissible evidence of the basis of that payment. Thus, taxpayer has failed to connect its claim with taxes paid on the pertinent fuel.

In addition, ABC advises that XYZ paid the taxes to the Department despite the administrative finding that taxpayer did not owe taxes on its purchases. This circumstance is confusing, at best. Indeed, if the Department determined that taxes were not due on taxpayer's purchases for which it requests this refund, then it is most unclear as to why the Department denied, as taxpayer alleges, XYZ's own claim for a refund

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<sup>1</sup> I note that this document is dated January 6, 2002. Since it refers, on its face, to a claim for refund for the period 11/02, It is reasonable to conclude that the date of the letter is incorrect, with the actual date of the letter being January 6, 2003.

<sup>2</sup> The basis of the suit was not established.

based upon XYZ's payment of these very taxes to the Department. Transcript, *passim*. While there is a provision in §13 to refund the money claimed to the supplier who actually paid the tax to the Department, this does not apply in this cause because of taxpayer's representation of this prior claim denial.

Also, if XYZ did pay these taxes in 1997, 1998, this claim for credit is not timely, because "[c]laims for full reimbursement for taxes paid on or before December 31, 1999 must be filed not later than one year after the date on which the tax was paid by the claimant." 35 ILCS 505/13. While it is true that ABC filed this claim within one year of its own payment to XYZ, taxpayer did not provide any competent proof for the record that the \$3,000 paid by ABC to XYZ in 2002 was for taxes XYZ paid to the Department in 1997, 1998 for the fuel at issue.

Claims for refund or credit require monies be removed from current state funds for satisfaction. Thus, the very nature of claims for refund mandate that there is certainty that the monies refunded were actually paid to the state, that they should not have been paid, that the refund is made to the entity that bore the burden of the monies paid so that there is no windfall to a claimant if a refund or credit is granted, and that the claim is made within the period of time mandated by the statute. In this case, none of these requirements have been met by this claimant. While the witnesses appeared very sincere in their beliefs, that is not a legally acceptable standard for the type of evidence required to prevail in this matter.

**WHEREFORE**, for the reasons stated above, I recommend that the Department's denial of ABC Coal's claim for refund or credit for \$3,000 be finalized.

Date: 8/8/2003

Mimi Brin  
Administrative Law Judge